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January 30, 2006

Via hand delivery and electronic mail to airporteir@longbeach.gov

Angela Reynolds
Environmental Officer
City of Long Beach
Planning and Building Department
333 West Ocean Boulevard
Long Beach, CA 90802

Re: Comments submitted on behalf of LBHUSH2 on the Draft Environmental Impact Report for the Proposed Long Beach Airport Terminal Area Improvement Project

Dear Ms. Reynolds:

This firm represents LBHUSH2 with regard to the proposed Long Beach Airport ("Airport") Terminal Area Improvement Project ("the Project") in the City of Long Beach ("City" or "Long Beach"). On behalf of LBHUSH2, we have reviewed the Draft Environmental Impact Report ("DEIR") circulated by the City for the Project pursuant to the California Environmental Quality Act, Public Resources Code Sections 21000 *et seq.* ("CEQA"), and its implementing regulations, 14 California Code of Regulations Sections 15000 *et seq.* ("CEQA Guidelines").

We conclude, based on this review, that the DEIR consultants have identified correctly several significant impacts that would result from implementation of the Project, unless mitigated, including: (1) releases of significant nitrogen oxide ("NO_X") and volatile organic compounds ("VOC") emissions related to Project construction; (2) alterations to the Airport Terminal Building ("Terminal") that could impair the Terminal's status as a historic landmark; (3) creation of significant new sources of light and glare; (4) releases of hazardous materials, such as asbestos, lead, and DDT, into the environment during construction and transport of hazardous materials adjacent to school sites; and (5) occurrence of nighttime noise levels in excess of levels permissible under the Long Beach Noise Ordinance ("the Noise Ordinance").

Moreover, the DEIR properly identifies significant impacts that would result from the so-called "Optimized Flights Scenario," unless mitigated, including: (1) emissions of particulate matter ("PM_{10}"), carbon monoxide ("CO"), and NO_X that would contribute substantially to existing air quality concerns; (2) induced demand for additional parking, potentially beyond the Airport boundary; and (3) increased passenger vehicle activity resulting in unacceptable levels of service at intersections near the Airport. As described in more detail in Section III.A below, we believe that the Optimized Flights Scenario is a component of the Project and, thus, the significant impacts that would result from the Optimized Flights Scenario must be treated as a result of the Project. It is important that the City heed its consultants' advice with regard to these issues and weigh carefully whether the Project should be approved in light of its serious impacts.

Other issue areas, however, are analyzed inadequately or have not been addressed at all in the DIER. In addition, the range of alternatives to the proposed Project described in the DEIR does not meet the requirements of CEQA. Finally, the DEIR provides insufficient detail and improperly defers development of important mitigation measures. These legal inadequacies are discussed in more detail below. The purpose of this letter is to inform the City that the environmental documentation for the Project fails to comply with the requirements of CEQA and the CEQA Guidelines. These problems must be remedied before the City can take action on the Project.

LBHUSH2 wishes to underscore that it does not oppose all Airport improvements or modernization. LBHUSH2 supports many aspects of the proposed Project, such as the implementation of LEED specifications for terminal improvements, the use of electric charging equipment for aircraft, and the utilization of ultra-low sulfur diesel for non-electric ground support vehicles. LBHUSH2 is concerned, however, that approval of the Project as proposed will jeopardize the Noise Ordinance, which stands as the most significant protection for Long Beach residents against the Airport's adverse environmental impacts. The Project's potentially irreversible consequences call for measured action by the City.

I. CITY DECISION-MAKERS MUST RECOGNIZE THAT THE PROPOSED PROJECT MAY ACCOMMODATE AIRPORT OPERATIONS ABOVE THE OPTIMIZED FLIGHTS SCENARIO.

Preparation of the EIR and approval of the proposed Project may represent the last meaningful opportunity the City has to influence growth, development and operations at the Airport. Specifically, approving the Project, which is made up of infrastructure that could accommodate aircraft operations far in excess of the Optimized Flights Scenario, paves the way for operations at the Airport to increase in the future, if the operational constraints provided by the Noise Ordinance are ever removed. Indeed, approving the Project will exert considerable pressure for the Noise Ordinance to be changed in the future. Such threats are entirely

avoidable, however, because much of the expansion of Airport facilities currently proposed, including the additional airline gates and aircraft parking places, does not appear to be necessary to achieve the purpose and objectives articulated by the City for the proposed Project. Proceeding with the Project as proposed would therefore unnecessarily set the Airport on a path toward future growth.

A. City Decision-Makers and the Public Must Understand the Maximum Number of Flights that Could be Accommodated by the Proposed Project if the Operational Restraints in the Noise Ordinance Are Removed.

The DEIR is predicated on the assumption that the Noise Ordinance will protect the residents of Long Beach indefinitely from the adverse environmental and other impacts associated with increased Airport operations. Although the Noise Ordinance enjoys broad support from the current City leadership and residents, it would be shortsighted to assume that the Noise Ordinance will always protect the City from increased airport operations and impacts. Relying solely on the continued durability of the Noise Ordinance does a great disservice to the City and may commit the City to following an irreversible path toward increased Airport operations and impacts in the future.

Although the Airport has entered agreements in the past with commercial airlines recognizing the validity of the City's Noise Ordinance, such agreements may not provide indefinite protection to the City and its residents. While the Federal Aviation Administration ("FAA") in 2003 apparently affirmed the "grandfathered" status of the City's Noise Ordinance under the Airport Noise and Capacity Act, 49 U.S.C. §§ 47521 *et seq.* ("ANCA"), new federal legislation could trump any grandfathered status provided by FAA. Without grandfathered status, the City's Noise Ordinance would be preempted by ANCA and, thus, would be unenforceable. *See City of Burbank v. Lockheed Air Terminal* (1973) 411 U.S. 624, 633 ("It is the pervasive nature of the scheme of federal regulation of aircraft noise that leads us to conclude that there is preemption" of state and local control.) And any Long Beach City Council may decide to exercise its authority to modify or eliminate the Noise Ordinance. Tellingly, Chris Kunze, Manager of Long Beach Airport, has recognized the potentially tenuous status of the Noise Ordinance, reportedly commenting that "[i]t is not a matter of if, but when" the Noise Ordinance is challenged. In short, although the Noise Ordinance may remain in place indefinitely, there are lingering threats to its continued viability.

If the operational restraints in the City's Noise Ordinance were removed today, the result would almost certainly be a dramatic increase in airport operations, with associated increased impacts on the surrounding community. Without the Noise Ordinance, Airport operations would be constrained only by the physical facilities available at the Airport. For example, the number of flights operated by the airlines would be limited only by the Airport's

physical capacity to accommodate such flights at airline gates and similar facilities. The proposed Project would substantially increase the capacity of the Airport's facilities. As such, if the operational constraints in the City's Noise Ordinance were removed following implementation of the Project, the airlines would encounter far fewer physical constraints on increased operations, and far more operations would result.

As the Airport proprietor, the City of Long Beach has the authority and responsibility to determine whether to expand the physical capacity of the Airport. Decisions to increase capacity must be taken with great care because once capacity is allowed to increase, it becomes essentially impossible to limit the use of that capacity. *See* 49 U.S.C. § 47107. These high-stakes consequences of the proposed Project call for prudence. In order to understand the full ramifications of approving the infrastructure improvements included in the proposed Project, we encourage the City's decision-makers to assume that the operational restraints in the Noise Ordinance could be removed.

The DEIR does not describe the theoretical maximum operations that could be accommodated by the proposed Project if Airport operations were not constrained by the Noise Ordinance. In particular, the DEIR provides no information regarding the maximum potential operational capacity of the proposed 11 airline gates and 14 aircraft parking positions. Airline gates and aircraft parking positions are two critical facilities components that can constrain an airport's operations.[1] The City should direct its consultants to describe the maximum potential operations of the proposed Project in order to understand what would happen if the operational restraints in the Noise Ordinance were removed following Project approval.

B. The City Should Not Approve Any Proposal to Increase Airline Gates and Aircraft Parking Positions When Such Facilities Are Not Necessary to Achieve the Proposed Project's Objective.

The DEIR does not describe how increasing the number of gates and aircraft parking places at the Airport achieves the proposed Project's express objective to "provide Airport facilities to accommodate the minimum permitted number of flights at the Airport (i.e., 41 commercial flights and 25 commuter flights) . . . ." DEIR p.1-3. In fact, the DEIR repeatedly acknowledges that the Airport could achieve increased operations up to and including the

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[1] It is beyond dispute that the number of gates available at an airport is a key factor in determining the maximum potential aircraft operations of an airport. An airport's maximum passenger capacity can be determined by evaluating the airport's aircraft fleet mix, the total number of available seats per aircraft, and the maximum number of operations per aircraft based on available gates. If the operational restraints in the City's Noise Ordinance were removed, the Airport's operations and passenger capacity would be far in excess of current activity level.

Optimized Flights Scenario (i.e., 52 commercial flights and 25 commuter flights) without adopting the Project or adding any infrastructure to the Airport. *See, e.g.*, DEIR pp.1-3 ("If the additional commuter flights occur [under the Optimized Flights Scenario], they will result from carrier decisions to optimize flight operations under the [Noise Ordinance], rather than the availability of specific terminal are[a] facilities."); 1-25 ("[A]ll provisions of the [Noise Ordinance] would apply to all the project alternatives, including the No Project Alternative. Since under optimal flight operations, the number of commercial flights could reasonably be projected to increase up to 52 daily flights and a minimum of 25 commuter flights are provided for with the Ordinance, these assumptions are also used for the No Project Alternative."); 2-7. Although the existing Airport conditions apparently can accommodate the operations allowed under the Noise Ordinance, as described above, improved infrastructure is unavoidably linked to *increasing* flights and passengers at the Airport.

The DEIR fails to provide any evidence that would support any alleged need to increase airline gates and aircraft parking places at the Airport simply to accommodate operations under the City's existing Noise Ordinance.[2] In fact, the proposal to substantially increase these facilities appears superfluous to the objective of the Project as defined by the City in the DEIR. It is the DEIR's burden to demonstrate that each of the components of the proposed Project is necessary to achieve the Project's objective. The DEIR has not met this burden.

The City would be taking an unnecessary risk if it were to approve the proposed airport expansion, including the additional gates and aircraft parking infrastructure, when these facilities do not appear to be necessary to meet the objectives of the proposed Project. As described above, the number of airline gates and aircraft parking positions are two critical components to determining the maximum operational capacity of an airport; limiting the number of gates and parking facilities limits the capacity of an airport. It is troublesome that the proposed Project appears to increase the operational capacity of the Airport unnecessarily. Such

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[2] In analyzing the air quality impacts of the proposed alternatives, the DEIR states that more aircraft parking positions may help reduce aircraft idling time on the tarmac, thereby reducing aircraft emissions. DEIR pp.3.2-27, 4-9. The DEIR does not provide data sufficient to support this claim. In addition, reduction of delay and aircraft idling time on the tarmac is <u>not</u> an express objective of the proposed Project. If the City is to rely on this argument, the DEIR must provide sufficient data to analyze the extent of the alleged problem and the alternatives' potential to solve the alleged problem. For example, the DEIR would need to describe: the number of aircraft that currently experience delay at the Airport; the time of day, day of the week, and time of year that the delay occurs; how long aircraft are typically required to idle because insufficient parking places are available at the Airport; and how increasing available parking places at the Airport would significantly reduce idling time and delay.

an unjustified increase in capacity-enhancing facilities should be rejected by City decision-makers.

II. THE DEIR FAILS TO ADDRESS REASONABLE AND FEASIBLE ALTERNATIVES TO THE PROPOSED PROJECT.

"An EIR for any project subject to CEQA must consider a reasonable range of alternatives to the project, or to the location of the project, which (1) offers substantial environmental advantages over the project's proposal . . .; and (2) may be feasibly accomplished in a successful manner considering the economic, environmental, social and technological factors involved." *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 566. "The discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly." CEQA Guidelines § 15126.6(b).

The DEIR analyzes two alternatives to the proposed Project (Alternatives A and B), in addition to the No Action Alternative required by CEQA (Alternative C). Alternatives A and B are nearly identical to the proposed Project, with only minor variations in the number of square feet allotted to holdrooms, passenger security screening, the concession area, baggage claim devices, restrooms, office space and ticketing facilities. *See* DEIR, Table 4.3-1, Long Beach Airport Passenger Terminal Improvements EIR Alternatives. Critically, the number of airline gates (11), aircraft parking positions (14)[3], and vehicular parking positions (2,835) is identical to the proposed Project for each of the alternatives presented in the DEIR, except the No Action Alternative. The DEIR does not address any alternative with airline gates and aircraft parking positions less than the maximum number of aircraft parking positions established by the City Council.

The result of such a narrow range of variation among the alternatives is tellingly displayed in Table 4.5-1, Comparison of Impacts by Alternative. Unsurprisingly, that Table shows that the impacts of Alternatives A and B are "similar in nature" to the proposed Project for each and every impact category. *See also* DEIR p.4-9 ("When comparing the three build alternatives, the impacts would be very similar because the same types of improvements are

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[3] Although the DEIR describes the proposed Project as including "12-14" aircraft parking positions, *see, e.g.,* DEIR Table 2.5-1, the substantive analysis in the DEIR assumes that the proposed Project will implement 14 aircraft parking positions. *See, e.g.,* DEIR pp. 3.2-28; 4-9. While CEQA mandates that the DEIR analyze the potentially significant impacts of the maximum number of aircraft parking positions potentially included in the proposed Project, it also requires the DEIR to analyze an alternative with fewer potential aircraft parking positions.

proposed with each alternative."). The analysis of three nearly identical alternatives described in the DEIR fails to comply with one of CEQA's must fundamental purposes – providing decision-makers and the public with a sufficient basis for comparing a proposed project to other potential ways to achieve a project's objectives. Moreover, the narrow range of alternatives presented in the DEIR appears contrary to the spirit of the City Council's February 8, 2005 direction that the alternative presenting the greatest expansion of the Airport shall contain a maximum of 12-14 aircraft parking positions. We understand the City Council as setting a ceiling on the number of potential aircraft parking positions under consideration, not a floor.

The DEIR must include at least one alternative that involves a number of airline gates and aircraft parking positions between the existing conditions (8 airline gates and 10 aircraft parking positions) and the maximum number established by the City Council (14 aircraft parking positions) ("Reduced Gates and Parking Alternative"). Such an alternative is required for two related reasons. First, it appears that a Reduced Gates and Parking Alternative would clearly meet the primary objective of the Project, given that the Airport already accommodates 41 air carrier flights and 25 commuter flights with the existing number of gates and parking positions.

Second, a Reduced Gates and Parking Alternative may provide environmental advantages over the proposed Project. The DEIR recognizes that increased aircraft operations result in significant air quality, noise, and traffic impacts. A Reduced Gates and Parking Alternative could reduce such impacts since it would constrain maximum potential operations at the Airport below the maximum operations that the proposed Project may accommodate. CEQA mandates that public agencies deny approval of a project with significant adverse effects when feasible alternatives or feasible mitigation measures can substantially lessen such effects. Pub. Res. Code § 21002; *Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 41. Analysis of a Reduced Gates and Parking Alternative is, thus, necessary to determine whether there may be a less-environmentally harmful way to meet the City's objectives for the Airport. In addition, a reduced scale alternative would be consistent with the City Council's February 8, 2005 direction, which provided a ceiling on the number of aircraft parking positions that may be approved.

III. THE DEIR'S ANALYSIS OF THE PROJECT'S ENVIRONMENTAL IMPACTS FAILS TO SATISFY THE REQUIREMENTS OF CEQA.

Under CEQA, an EIR may conclude that impacts are insignificant only if it provides an adequate analysis of the magnitude of the impacts and the degree to which they will be mitigated. Thus, if an agency fails to investigate a potential impact, its finding of insignificance simply will not stand.

A. The Environmental Impacts of the Optimized Flights Scenario Must be Analyzed as a Reasonably Foreseeable Consequence of the Project.

The DEIR states that there is no causal relationship between the proposed Project and increased flight operations under the Optimized Flights Scenario, which the DEIR insists is not a component of the Project. *See, e.g.,* DEIR pp. 1-3, 2-7. On this basis, the DEIR claims that any significant environmental effects that will be caused by increased Airport operations under the Optimized Flights Scenario are not impacts attributable to the Project. *Id.* The DEIR asserts that the analysis of the significant impacts of increased operations are provided solely at the direction of the City Council, not a requirement of CEQA. *See* DEIR p.2-7. This claim is convenient and self-serving because the DEIR attributes five potentially significant impacts, including an air quality impact that cannot be mitigated below a level of significance, to flight and passenger activity associated with the Optimized Flights Scenario. *Compare* DEIR Table 1.10-1 (Summary of Impacts and Mitigation Measures) *with* DEIR Table 1.11-1 (Summary of Impacts and Mitigation Measures Related to the Optimized Flights Scenario). The DEIR also recognizes that additional facilities will be required to accommodate increased operations, including the potential construction of a third parking garage, yet it refuses to analyze the significant environmental impacts of such facilities because it claims the facilities are unrelated to the Project.

The DEIR's grudging compliance is contrary to the requirements of CEQA. CEQA requires the DEIR to evaluate those activities related to a project which will result in a direct or reasonably foreseeable indirect physical change in the environment. Pub. Res. Code § 21065. The operations anticipated under the Optimized Flights Scenario are authorized under existing law and regulation, can be accommodated by existing Airport infrastructure, and will be facilitated by the increased infrastructure included in the proposed Project. As the DEIR acknowledges, significant environmental impacts, particularly to air quality, noise, and traffic resources, are reasonably foreseeable changes in the physical environment that will result from the Optimized Flights Scenario. *See* DEIR Table 1.11-1. Thus, CEQA requires the DEIR to present these significant impacts as a result of implementing the proposed Project. *See Laurel Heights Improvement Ass'n v. Regents* (1988) 47 Cal.3d 376, 388. The DEIR fails to meet this requirement.

Moreover, the DEIR's effort to deflect any responsibility for the significant environmental impacts (including growth-inducing impacts) associated with operations that are already allowable under the Noise Ordinance is contrary to the clear direction of the Long Beach City Council. In February 2005, the City Council directed staff to reduce the scale of the proposed Project and to evaluate the environmental impacts of the maximum operations under the Noise Ordinance. Rather than performing a straightforward analysis that presents a cohesive picture of the total significant impacts, the DEIR presents a complicated scheme that separates

the significant impacts of aircraft operations *currently authorized* under the Noise Ordinance from the remainder of the proposed Project. This convoluted effort does not comport with the City Council's direction or CEQA.

B. Air Quality Analysis.

As an initial matter, we join the concerns raised by Camille Marie Sears in her January 27, 2006 letter to the City commenting on the DEIR's air quality analysis. Her detailed review and critique of the DEIR raise numerous inadequacies that the City must remedy.

In addition, the DEIR's air quality analysis understates emissions caused by reverse thrust and other emissions. Specifically, the DEIR's air quality analysis improperly shortcuts analysis of emissions discharged when aircraft use reverse thrust rather than braking. Reverse thrust is a high thrust mode that produces very high NO_X emissions per unit of time when compared to other operational procedures. NO_X emissions are a significant problem in the region surrounding the Airport. Based on the substantial emissions that reverse thrust produces, accurately describing the time-in-mode for reverse thrust is critical to the integrity of the air quality analysis. Understating the number of seconds spent in this high thrust mode would significantly skew analysis of emissions.

The air quality analysis in the DEIR uses a rough estimation, rather than the FAA's preferred method for calculating emissions released during reverse thrust. The FAA publication "Air Quality Procedures for Civilian Airports and Air Force Bases" (April 1997) ("Air Quality Handbook") provides that "[t]ime spent in reverse thrust should be combined with take-off mode emissions indices and fuel flow as a means of accounting for reverse thrust mode emissions." *Id.* The DEIR provides no explanation for why it fails to utilize the FAA's preferred method.

While the Air Quality Handbook finds that estimation of reverse thrust may be acceptable if properly applied, it notes that "[a]ircraft reverse thrust typically is applied for 15-20 seconds on landing." It appears that the DEIR's estimate resulted in an assumption that aircraft would operate in the mode for only 12 seconds. The three to seven second difference between FAA's estimation of time-in-mode and the DEIR's estimate significantly understates the Project's NO_X emissions. Moreover, it appears that the DEIR developed its estimation based on average take-off mode and climb-out mode times of three aircraft. *See* DEIR Appendix C, Attachment B. Since the reverse thrust mode occurs exclusively when aircraft are operating on the ground, it is inappropriate for the DEIR to base its emissions analysis on climb-out mode, which occurs exclusively when aircraft are operating in the air. In addition, the DEIR only considers the emissions caused by reverse thrust "in some analyses." DEIR p.3.2-2. The DEIR provides no explanation as to why significant emissions caused by this mode were considered

only selectively and does not identify the emissions analyses where reverse thrust emissions are absent.

On a related note, the DEIR apparently assumes that aircraft regularly would operate at 90 percent of maximum take-off weight. Assuming that aircraft will operate at less than full capacity underestimates potential emissions. The DEIR should describe the anticipated emissions of the proposed Project assuming that airlines operate all aircraft at full capacity.

C. Noise Analysis.

Recent definitive case law requires that an EIR "measure how many high noise events will take place during the noise sensitive nighttime hours [and] describe the effects of noise on normal nighttime activities such as sleep." *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1382 n. 23 ("*Berkeley Jets*"). The Court of Appeal in that case stressed the need to provide information *in a form that is useful to help nearby residents* evaluate the impact of future increased air traffic on their daily lives. In particular, the EIR must enable residents to evaluate the degree to which the "single events" of aircraft takeoffs and landings interfere with their sleep and conversation. *Id.* at 1372-83.

The DEIR's methodology, however, translates simple single event data into a fraction of a "noise budget," which is made up of the number of operations weighted by the time of day and the noise level. *See* DEIR pp.3.6-9 to 3.6-11. While we understand that the noise budgeting technique is provided for in the Noise Ordinance and may be a useful "language" for Airport technicians and consultants to discuss noise impacts, we submit that it fails to provide useful information to City decision-makers or residents, as required by *Berkeley Jets*. The DEIR should have provided single event noise contours for each aircraft type on each flight track, as well as their frequency and times of occurrence. Doing so would give residents important information about the noise impact, frequency, and timing of "single events," enabling them to evaluate the significance of those impacts on sleep, conversation, and quality of life. Without such information, the analysis remains insufficient and the level of disclosure of impacts does not satisfy CEQA.

D. Cultural Resources.

The DEIR's cultural resources analysis lacks substantial required detail about the planned modifications to the historic Terminal and design of new structures attached and adjacent to the Terminal. The Airport's own cultural resources consultant recognizes that the vague description of the Terminal modifications and associated improvements prevents a complete analysis. For example, the consultant notes that although interior elements of the Terminal are "considered character-defining features" of the historic landmark, "the changes to

the interior floor plan are also not specified in the design concept drawings and *cannot be evaluated in the historical assessment.*" DEIR p.3.3-12 (emphasis added). Similarly, the consultant finds that "[t]he general interior decoration/design of the original concourse/waiting room is not known at this time," and potential interior changes to the Terminal "are not evaluated in the historical assessment because the proposed design is conceptual." *Id.* Likewise the consultant finds that it is "unclear from the design concept drawings if the proposed walls on the outside of the garden area are transparent," or instead "will conceal the [historic] curved window walls." DEIR p.3.3-11. Even where some detail is provided, the consultant suggests a lack of clarity in the proposals and a qualification of the analysis based on the possibility that design plans may change. *See, e.g.,* DEIR p.3.3-11 ("*It appears from the drawings* that no alterations have been proposed" to Terminal elevations of historical significance." [emphasis added]); *id.* ("*[I]t appears in the design concept drawings* that a door would be installed . . . ."). Despite such a qualified analysis, the DEIR finds that all impacts to cultural resources can be mitigated below a level of significance. Such a conclusion cannot be supported. The lack of detail makes it impossible for the decision-makers and the public to assess the severity of impacts to the historic landmark and the adequacy of proposed mitigation measures.

IV. THE PROPOSED MITIGATION MEASURES FAIL TO ENSURE THAT ENVIRONMENTAL IMPACTS WILL BE MITIGATED BELOW A LEVEL OF SIGNIFICANCE.

In several cases, the DEIR proposes mitigation measures that are infeasible and unenforceable. The DEIR also impermissibly concludes that the Project's environmental impacts will be mitigated below a level of significance, while at the same time deferring necessary development and analysis of critical mitigation measures. This flawed approach results in the DEIR's failure to disclose the true scope of the Project's environmental impacts.

A. Air Quality Mitigation.

We agree with the DEIR's determination that incremental air quality emissions from increased aircraft operations and passenger vehicle operations at the Airport would exceed the South Coast Air Quality Management District's ("SCAQMD") PM_{10}, CO and NO_X thresholds and result in a significant impact, unless mitigated. The DEIR proposes to address these long-term significant effects by cross-referencing two mitigation programs described in Table 1.10-1. However, the offered mitigation programs were designed to address air quality impacts caused by other components of the Project. Neither of these programs are adequate mitigation under CEQA for the impacts caused by increased aircraft and vehicle operations.

The first mitigation program described in Table 1.10-1 was developed to address significant short-term NO_X and VOC emissions stemming from the proposed Project's

construction activities and is focused *exclusively* on construction practices and activities that will reduce emissions. *See* SC 3.2-1, SC 3.2-2; MM 3.2-1 through MM 3.2-10. It is completely unsurprising then that this mitigation will not reduce the significant NO_X emissions that are anticipated to result from increased *aircraft operations*.

The second "mitigation" program described in Table 10.1-1 is not actually mitigation at all because it was not developed to reduce a potentially significant effect. Rather, the program is a series of measures which are "recommended where the Proposed Project would have an opportunity to further reduce emissions" in order to achieve a net air quality benefit. DEIR Table 1.10-1, p.1-14. The heart of that program is a *recommendation* that the City require airlines to comply with a memorandum of understanding between the airlines and the California Air Resources Board, or other similar agreements, aimed at reducing PM_{10} and NO_X emissions from Ground Support Equipment ("GSE"). Reference to this program does not serve as adequate mitigation for the significant impacts anticipated from increased aircraft and vehicle operations for several reasons.

First, the *recommended* program is not mandatory and the DEIR does not claim that the City will commit to ensuring its implementation. Second, even if the City committed to requiring agreements regarding GSE, it is not clear the Airport has the authority to require airlines to enter this type of agreement. Mitigation measures must be fully enforceable through permit conditions, agreements or other legally binding instruments. CEQA Guidelines § 15126.4(a)(2). Where mitigation is not fully enforceable, it is inadequate. *Federation of Hillside and Canyon Ass'ns v. Los Angeles* (2000) 83 Cal.App.4th 1252, 1261-62 (mitigation must "actually be implemented [and] fully enforceable").

Third, the recommended program is designed to address PM_{10} and NO_X emissions from GSE. Yet the significant emissions that the DEIR is required to address will come from increased GSE *and vehicular* operations at the Airport. There is no measure included in the program to address emissions from a vehicular source. Finally, the program described in Table 1.10-1 is inadequate because it is not designed to address CO emissions, which the DEIR anticipates will be emitted from increased aircraft operations. In sum, the DEIR makes a half-hearted effort to reduce the anticipated significant emissions of PM_{10}, CO and NO_X from increased aircraft operations and passenger vehicle activity at the Airport. Its effort is inadequate and does not meet the requirements of CEQA.

B. Noise Mitigation.

To mitigate noise impacts, the DEIR relies on the following mitigation measure:

> MM 3.6-2: Within 24 months of certification of the EIR, the Airport Manager shall develop a land use compatibility program addressing existing and future aviation noise levels. The program shall be an ongoing voluntary program that will provide noise attenuation and be available to all residential units within the 65 CNEL contour and schools within the 60 CNEL contour based on the contours published for Long Beach Airport for the previous calendar year (Quarterly Report for 12 month Period Ending December 31). In exchange for sound insulation treatment, the owners of the property will provide the City of Long Beach an avigation easement over said property. The program shall identify (1) methods of providing noise attenuation; (2) funding sources for the improvements; (3) methods for establishing priorities for implementing the improvements; and (4) an installation agreement. The land use compatibility program will be administered by the City of Long Beach, Airport Bureau.

This mitigation measure is problematic for a number of reasons. First, it is simply a statement of the City's preexisting obligations under State law, and does not provide any additional protection or mitigation to residents impacted by airport noise. Under State law, the City, as operator of the Airport, is required to take action to avoid incompatibility between the Airport and surrounding land use. *See* California Public Utilities Code §§ 21001 *et seq.* (State Aeronautics Act); California Code of Regulations Title 21, § 5000 *et seq.* Long Beach Airport has been designated as a noise problem airport and it exposes a number of neighboring land uses to noise in excess of standards set by the State.[4] Contrary to the requirements of State law, the Airport does not currently have a variance from CalTrans that would allow it to operate in excess of applicable State standards (e.g., exposing neighboring residences to noise in excess of 65 CNEL). *See* California Code of Regulations Title 21 § 5012 ("No airport proprietor of a noise problem airport shall operate an airport with a noise impact area based on the standard of 65 dB CNEL unless the operator has applied for or received a variance . . . ."). If the Airport were to apply for and obtain such a variance, it would, as a condition of the variance, be required to implement a residential sound insulation program and/or other strategies to eliminate the incompatibility between airport operations and neighboring land uses. In other words, the City is already obligated to implement the kinds of measures it has put forth as a noise mitigation measure in the DEIR. The fact that the City has previously failed to satisfy its obligations in this regard raises serious questions regarding whether the City would actually comply with MM 3.6-2, if it were adopted.

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[4] *See* http://www.dot.ca.gov/hq/planning/aeronaut/htmlfile/avnoise.php (California Department of Transportation Division of Aeronautics website).

Another problem with the MM 3.6-2 is that the City proposes to require land owners to grant the City of Long Beach an avigation easement over their property in exchange for receiving sound insulation treatment. This requirement would put land owners in the untenable position of having to grant a perpetual property right (an avigation easement) to the City without compensation, if they want to receive the sound insulation they are entitled to as mitigation for airport noise. Such a requirement is inappropriate for a number of reasons. First, although the property right (avigation easement) granted is permanent in nature, sound insulation has a limited lifespan and becomes less effective over time. Over the long term, an avigation easement will almost certainly be more valuable than the sound insulation a land owner receives in exchange, so requiring such an exchange is inappropriate. Second, the exchange envisioned by the City, which is clearly not required by State law, will likely discourage or prevent those who are entitled to receive sound insulation from participating in the program. In short, the avigation easement requirement would dramatically undermine the effectiveness of the proposed mitigation measure.

Moreover, the City has improperly failed to consider whether offering such insulation without requiring an avigation easement would invite greater participation and thus be a more effective mitigation measure. Because such a revised mitigation measure is, at the very least, facially feasible, the City must consider it in a revised DEIR. *See Los Angeles Unified School District v. Los Angeles* (1998) 58 Cal.App.4th 1019, 1029 (failure to meaningfully respond to proposed mitigation measures requires invalidation of EIR unless proposed measure is "facially infeasible").

C. Traffic and Circulation Mitigation.

1. Intersections.

The DEIR finds that increased Airport operations will cause significant traffic impacts at certain intersections near the airport. DEIR p.6-16. The DEIR suggests that the City's options for reducing such impacts are identifiable now. DEIR p.6-16 ("Additional improvements [to reduce traffic impacts at the intersections] would require extensive right of way purchases that would impact several local businesses."). Yet the DEIR defers analysis and implementation of presently identifiable mitigation. *See* MM 3.8-1 (proposing that "when the ADPM passenger levels reach 12,700, the Airport Manager shall develop a traffic monitoring program"). It concludes that the proposed deferred mitigation is sufficient to mitigate the significant impacts below a level of significance.

Under CEQA, an EIR may conclude that impacts are insignificant only if it provides an adequate analysis of the degree to which such impacts will be mitigated. *See Sundstrom v. County of Mendocino* (1989) 202 Cal.App.3d 296, 306-07 (CEQA prohibits

deferral of mitigation measure design). Thus, CEQA generally requires that all mitigation measures be adopted simultaneously with, or prior to, project approval. *Id.* An agency may defer preparation of a plan for mitigation only when the agency commits itself and/or the project proponent to satisfying specified performance standards that will ensure the avoidance of any significant effects. *Id.*

Contrary to CEQA's requirements, the present DEIR fails to provide specified performance standards by which future mitigation would be measured to ensure avoidance of any significant environmental effects. For example, MM 3.8-1 merely finds that the mitigation should "enhance the efficiency of traffic movement." The DEIR must either analyze mitigation such that the decision-makers can adopt the measures along with, or prior to, project approval, or provide a description of the specific performance standards by which it will be judged. *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 195 (invalidating EIR for improperly deferring analysis). Without this information, it is impossible for the public and the decision-makers to understand the severity of the traffic and parking impacts and the effectiveness of the proposed mitigation.

We are particularly skeptical that any measures developed in the future pursuant to MM 3.8-1 will reduce significant impacts to intersections near the Airport. Specifically, the DEIR states that "[d]iscussions with City staff indicate that no further lane additions are feasible at [the] two intersections" of concern, and that extensive acquisition of right of ways would be required to reduce congestion. DEIR p.6-16. Unsurprisingly, the DEIR recognizes that one of the intersections "will still operate at a deficient level of service in [] 2020," even after adoption of the proposed mitigation. DEIR p.6-16. Curiously, the DEIR concludes that this impact will be mitigated below a level of significance. This conclusion is unsupportable and contrary to statements in the DEIR itself.[5]

2. Parking.

Mitigation proposed to remedy significant parking impacts is similarly flawed. Specifically, the DEIR finds that the parking demand anticipated to occur in conjunction with the Optimized Flights Scenario will cause a significant impact on the environment. DEIR p.6-

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[5] The DEIR claims that "the improvements associated with the Douglas Park [Project] would accommodate the additional [passenger vehicle traffic] demand associated with the Optimized Flights scenario." DEIR p.6-16. Even were the DEIR to provide sufficient evidence to support this claim (which it does not), we agree with the DEIR's conclusion that potential "implementation [of the Douglas Park improvements] cannot be relied upon to mitigate the impacts of the Existing with Optimized Flights scenario," DEIR p. 6-16, because the measures are unfunded and there is no guarantee that they will be implemented.

17. The DEIR proposes that mitigation of parking impacts "may include development of an additional parking structure within the Airport Entrance area." DEIR p.6-17. However, it defers analyzing the potential environmental consequences of building a third parking garage, or any other potential mitigation, at the Airport. MM 3.8-2 (proposing that "when the annual passenger levels reach 4.2 MAP, the Airport Manager shall identify and develop additional on-site parking opportunities").[6] It provides no standards by which the decision-makers or the public may evaluate the effectiveness of the proposed mitigation measure. Perhaps more troubling, the DEIR provides no explanation for why it defers analysis of the environment impacts of constructing a parking structure near the entrance to the airport. No complicated study is required in order to reasonably conclude that significant impacts to the environment may stem from construction and operation of a third parking garage at the Airport.

The DEIR recognizes that the parking structure included in the Project will not satisfy the increased parking demand that will occur under the Optimized Flights Scenario and that a significant impact will result. DEIR p.3.8-18. It admits that the Airport will need to develop additional parking facilities in order to meet this demand, and suggests a third parking structure at the Airport could be constructed. DEIR p.3.5-18 ("The only way this impact [increased demand for parking] could be mitigated is to provide additional parking on the Airport . . . .). Yet the DEIR defers analyzing the impacts of an additional parking garage, or any other parking solution, for another day.

The DEIR's suggestion that environmental review of the additional parking facilities would be required prior to construction is unsatisfactory. Deferring the analysis of the environmental impacts of a physical improvement that is a critical component of the proposed Project constitutes segmentation.[7] Segmentation is strictly prohibited under CEQA. *See* CEQA Guidelines § 15378(a) (definition of "Project" as "the whole of an action which has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect change in the physical environment . . . ."); *Orinda Association v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1171-72 ("A public agency is not permitted to subdivide a single project into smaller individual subprojects in order to avoid the responsibility of considering the

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[6] The DEIR also relies on MM 3.8-2 in the Land Use and Relevant Planning analysis to reach the conclusion that the proposed Project's significant impact will be reduced below significance. The flaws in this mitigation measure as described in the Traffic and Parking discussion are equally applicable to, and serve to similarly discredit, the DEIR's Land Use and Relevant Planning analysis.

[7] The DEIR's admission that the proposed Project will induce additional parking demand is likewise an example of the DEIR's failure to adequately analyze the growth-inducing impacts of the proposed Project.

environmental impacts of the project as a whole."). To be legally adequate, the DEIR must be revised to include a thorough analysis of the potentially significant environmental impacts of proposed options to meet increased parking demand associated with the proposed Project.

CONCLUSION

For the reasons detailed in this comment letter, the DEIR fails to provide a reasonable range of alternatives to the proposed Project, fails to provide adequate disclosure and mitigation of significant environmental impacts, and therefore violates CEQA. The DEIR should be revised and re-circulated to assure compliance with the legal requirements of CEQA.

The City sits in a unique position vis-a-vis its Noise Ordinance. The durability of the Noise Ordinance, however, is far from assured. As the City sits on the cusp of a decision regarding the development of Long Beach Airport, it should be mindful that imprudent action now could effectively eliminate the City's ability to control and direct Airport growth in the future.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

OSA L. WOLFF

DEBORAH L. KEETH

cc: LBHUSH2

[P:\LBHUSH\dk005(FINAL COMMENTS ON DEIR).wpd]